MONTANA LEGISLATIVE HISTORY

Chapter 311 1973

Bill H 238 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 26	✓ C	Hearing Date(s)	Feb 26	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Jan 26	✓ C		Feb 26	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

January 26, 1973

JUDICIARY COMMITTEE

The fourteenth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Friday, January 26, 1973. Representative Hall, Chairman, presided. All members were present.

This meeting resulted in strictly hearing on the bills. Committee meeting for consideration of bills was called later in day by Chairman Hall due to large number of witnesses testifying on these bills.

HOUSE BILL 267 Representative Yardley, chief sponsor, summarized and then introduced Mr. Wesley W. Wertz of the Montana Bankers Association to testify in support of bill. No other proponents and no opponents. Chairman Hall closed hearing following discussion.

HOUSE BILL 277 Representative Towe, chief sponsor, summarized this bill which is an act relating to the apprehension and return of children who have left a juvenile facility of the department of Institutions without permission by defining the term 'juvenile facility of the department.'. Mr. John G. Thomas of Department of Institutions appeared to testify on behalf of bill at the request of his director. Mr. Thomas urged support of the bill, No other opponents or proponents. Chairman Hall closed the hearing and stated consideration of bill would be later in day.

HOUSE BILL 269 Representative Bell, chief sponsor, summarized this bill relating to the confidentiality of automobile accident reports filed pursuant to the uniform accident reporting act by providing that such reports may be examined by certain persons. Captain Heath representing the Montana Highway Patrol testified in opposition to bill. No other opponents and no proponents. Discussion ensued. Chairman Hall closed hearing and stated bill would be taken up for consideration later.

HOUSE BILLS 237, 238 and 239 All three bills are sponsored by Representative Colberg and pertain to problems of eminent domain and the mining of coal. Chairman Hall stated he would allow twenty minutes for the proponents, fifteen minutes for the opponents and five minutes for rebuttal. Representative Colberg stated House Bill 356, not scheduled for hearing today, deals with problem in similar vein.

Testimony, both written and verbal, in support of HOuse Bills 237, 238 and 239 was given by the following:

1) Mr. Don Bailey, representing himself, from Colstrip, Mt.
2) Kit Muller, representing Northern Plains Resource Center.
3) Representative John Walborn, Hardin, Big Horn County
4) John Redding, Sarpy Creek, Hysham, Mt., representing Sarpy Creek Protective Association.

5) Robert R. Tully, Roundup, Mt., representing Bull Mountain Landowners.
6) Allen F. Withers, Chairman, Northern Plains Resource Council, Billings, Mt.
7) Ellen Pfister Withers, Billings, Mt., representing Bull Mountain Landowners.
8) Lena S. VanDriest - no form filled out.

Opponents to House Bills 237, 238 and 239 were:
1) P. L. McDonald, representing ACM, Butte.
2) J. Bob Corette, representing Montana Power.
3) Cal Robinson, Kalispell, Decker Coal Company.

Also testifying on these bills was Mr. Geoffrey L. Brazier, Western Montana Mining Association.

Following testimony five minutes was allowed for rebuttal which actually turned into seven minutes for rebuttal.

Chairman Hall then opened the committee for questioning of witnesses. Considerable discussion ensued.

Chairman Hall called a meeting of the Judiciary Committee to be held today upon adjournment of the House to take action on the bills presently before committee.

Chairman Hall moved to adjourn and Representative Lucas seconded motion. Passed unanimously and meeting adjourned at 10:45 a.m.

Representative Towe stated that with these amendments have eliminated any reference to school principals. Representative Yardley seconded motion. Motion to amend carried unanimously.

Representative Lucas moved DO PASS AS AMENDED. Representative Greely seconded. Motion carried unanimously.

HOUSE BILL 238 Chairman Hall stated committee would consider this bill first as it is the most complex and difficult of the three "eminent domain" bills.

Representative Towe moved DO PASS. Representative Baucus seconded. Representative Lucas stated he is opposed to all three bills. Discussion by committee members followed on declaring minerals as no longer of public use, possibility of drying up sources of money coming into Eastern Montana as well as industry that could come in as a result.

Representative Greely made substitute motion that Representative Towe's proposed amendment be used. Representative Baeth seconded. Representative Greely withdrew his motion and committee reverted to original motion DO PASS.

Representative Towe moved to amend by changing bill to deal with coal only. Representative Baucus seconded.

Roll call vote taken on motion DO PASS. Motion failed with Representatives Yardley, Baeth, Bell, Brown, Greely, Lucas and Warfield voting no.

Motion to amend bill carried unanimously. Representative Towe moved bill be further amended on page 4, section 2, line 7 by deleting all of section 2. Representative Bell seconded. Motion to amend carried with Representative McKittrick voting no.

Representative Towe moved House Bill 238 DO PASS AS AMENDED. Representative Brown seconded. Motion carried unanimously.

HOUSE BILL 237 Chairman Hall stated he would exercise prerogative of the chair as a member and that he was concerned about the language of the bill itself. Representative Hall read his draft of amendment to committee and stated he does not intend to change the law. Discussion followed.

Representative Towe moved to strike all of bill after the enabling clause and insert Representative Hall's amendment in lieu thereof with further addition of severability clause. Representative Greely seconded. Motion to consider Representative Hall's proposed amendment carried with Representatives Hall, Baucus, Marbut, McKittrick, Roberts and Towe voting yes. Representative Baeth passed but voted yes to break the tie vote.

Jan. 26, 1973

Statement presented for Upper Missouri Group Sierra Club.

While there may well be merit to an eminent domain law in hard rock mining situations in Montana we are against the employment of this eminent domain device to aid coal companies in acquiring strip minable Montana coal.

The alleged energy shortage is being used by the energy sellers to justify immense consumption rates of a non-renewable Montana resource. This rapid consumption of a non renewable resource at devastating exspens to future land uses for private gain, deserves careful considerations in all it's aspects for many reasons. The right to exercise eminent domain poceedings against owners of land surface by the coal mining companies to obtain the coal beneath only came into being by questionable, unfortunate circumstances. We beleive it is not in the interest of good management of all resources of the area to permit public enforcement of the selling of important valuable, surface land uses to energy companies for ultra-destructive one-time use, of the energy contained over vast areas in a few stratas below.

No true energy crisis has been demonstrated. This coal will not spoil. If and when it is used, it should at least be with an efficient weight- energy conversion ratio which is not now planned and with a high degree of land reclaimation attaimnent, which contrary to claims, is not now fully attainable. Lending the energy companies the public backing of eminent domain methods with which to forcefully gain title to surface ownership in coal areas

is not justifiable. In the interest of wise planning and use of Montana resources we urge that this right of eminent domain proceedure of land acquisition by the energy companies be repealed.

Please support House Bills 237, 238 and 239

Thank You,

Shirley J. Berg

Shirley J. Berg

Testimony on:
H. B. 237, H. B. 238, and H. B. 239 and 267
Judiciary Committee
January 26, 1973
By: Don Bailey
Rancher
Rosebud Area
Forsyth, Montana

The present situation whereby lessors or owners of mineral rights under surfaces not owned by them can acquire these surfaces for their operations by the right of condemnation presents a very serious problem for any landowner in Montana. True, you are entitled to surface damages, but because eminent domain provides an alternate remedy to the mineral owners or lessors, you are not in a position to validly negotiate for these surface damages.

They can make you what they feel is a reasonable offer, considering only actual physical damage to the property, and not considering damage to an economically operational enterprise. If you do not accept this offer, you will be faced with court action.

I am a landowner in the Colstrip area where extensive development is planned. Because of the atmosphere of uncertainty surrounding the development, I know from personal experience that this "club" has been used by industry to acquire large tracts of land from a strictly speculative viewpoint.

They figured that acquisition of a large volume of surface at present low market values would provide a hedge against future inflated values and would also provide them with good trading stock for other surface they may need in the future.

This concept could essentially completely destroy the economic soundness and feasibility of all agriculturally oriented businesses in Montana.

For these reasons I support these measures.

My name is John Redding. I am a rancher in the Sarpy Creek area. I want to make it clear that I am no lawyer. I can't talk about the legal problems of the eminant domain law, but only about the effect it's having on me and people like me.

A coal company has been for the past year threatening to condemn our ranch. Their so-called land agents, or whatever you want to call them, threatened ranchers in the Sarpy Creek area and made them sell. I feel this is an illegal use of the eminant domain law. Then after they force a man to sell them his land, they have him sign a contract which reads: "whereas owners desire to grant and Westmoreland desires to purchase..." If this law isn't changed, a coal company will own the whole state of Montana.

We were told to sign a blank option agreement, or they would condemn our land and take it for nothing. I asked what they were willing to pay and was told: "If I told you, all the rest of the people in the Sarpy area will know."

Did any of you ever try to plan on improving a ranch or home not knowing if you will be there one day or one year or maybe less if the coal company moves in tonight?

Don't we, the surface owners of Montana, have a right in the decisions about our ranches?

The state should not be lending its powers of eminant domain to private companies.

NORTHERN PLAINS RESOURCE COUNCIL
437 STAPLETON BUILDING
BILLINGS, MONTANA 59101
(406) 259-6114

Testimony presented to the House Judicary Committee on January 26, 1973.

Mr. Chairman and members of the committee, my name is Kit Muller. I am from the Northern Plains Resource Council, a regional coalition of farmers, ranchers, and conservationists who are concerned about the current and the impending development of the Fort Union coal deposits. I am going to speak to only one aspect of the eminant domain legislation that you are considering here today; namely, the extent to which mineral rights have been severed from surface rights in the state of Montana.

By far the largest single owner of mineral rights in our state is the federal government. Either directly or indirectly, the Bureau of Land Management is responsible for the administration of the mineral resources on approximately 38 million acres of land in Montana, a figure that is roughly equivalent to one-third of the total area of the state. Of this 38 million acres, the federal government controls approximately two-thirds of the surface rights. In all, 12 million acres of private surface are underlain by mineral resources administered by the Bureau of Land Management.[1]

To look just at coal mineral rights, there are four major blocks of coal mineral right ownership in the state: the federal government, the State of Montana, the Northern Cheyenne Tribe and the Crow Tribe, and the Burlington Northern Railway.

BLM

According to the Bureau of Land Management, there are approximately 3.1 million acres of strippable coal reserves in eastern Montana, strippable given the existing technology and the possible market for coal. 1.7 million

acres, or a little over half of the total strippable coal reserves, are owned by the federal government. Approximately 88% of the surface rights on these 1.7 million acres are privately held.[2] Thus far the Bureau of Land Management has leased 36,232 acres of coal in eastern Montana. The surface rights on approximately 90-95% of this land are privately held.[3]

State of Montana

The State of Montana has leased 56,902 acres of coal mineral rights. Two percent (1,156.56 acres) of the surface involved is held privately. Applications are pending on an additional 7,219.41 acres of state coal. Of this, only 320 acres of surface are privately owned.[4]

Northern Cheyenne

The Cheyenne Tribe has granted prospecting permits for the coal mineral rights on 227,773 acres of land. The Tribal Council has also leased an additional 16,035 acres. As far as I know, all of the surface involved is either owned by the Cheyenne Tribe itself or is owned a member of the tribe.[5]

Crow

The Crow Tribe has granted prospecting permits for 231,555 acres. Of the surface involved, 19,563 acres or 8% is held by non-Indians. The Tribal Council has also leased 61,123 acres of coal mineral rights. Of this, 50% of the surface is privately owned by non-Indians.[6]

References

1. Proceedings and Recommendations of the 1969 Governor's Conference on Mined-Land Reclamation and Montana Mining Law, compiled by S.L. Groff, State of Montana, Bureau of Mines and Geology, June 1970, p. 36

2. Ibid, p. 37

3. Public Land Digest, U.S. Department of the Interior, BLM Montana State office, p. 9

4. letter to Mr Frank Culver, Coal Task Force Co-ordinator, from Bob Duncan, Department of State Lands, Sept 28, 1972

5. Letter to Mr Fletcher Newby, executive director of the Montana Environmental Quality Council, from Maurice Babby, Billings area director of the Bureau of Indian Affairs.

6. Ibid

Testimony
House Judiciary Committee
H. B. 237, H. B. 238, and H. B. 239
January 26, 1973

Three of the bills under consideration here today attack the newly crystallized problems of the Montana surface owner's lack of rights. For many of us landowners in Eastern Montana the problems of surface owner's rights as opposed to those of the mineral owner burst upon us with the shock and immediacy of an atomic bomb explosion in our own backyard about two years ago. When Consolidation Coal talked to Mother and me about two years ago, we asked our family lawyer about things like condemnation, and he was shocked to find it in the Montana Revised Code, although he was a competent attorney with about twenty years practice.

It seems that large numbers of us in Eastern Montana were induced to settle there by means of homestead processes and railroad solicitations mainly for fodder to keep the Indians out of the more settled areas to the East and to the West, not for any real concern for the future of the settlers. Now seventy years later most of us have found out that we are tenants at sufferance awaiting the pleasure of dispossession by the mineral interests.

I am sure that I can say that without exception none of us who own land in coal bearing areas would have settled, paid good money, and invested our lives, our hopes and our love in a land which we even suspected would be destined for strip mining. If a buyer suspects land is to be stripped, why bother to buy it from either the railroad or any other owner? Any reasonable man who wanted to buy land for agricultural purposes would spend his money for land he could keep, not lose. I know that my father never envisioned such a thing when

he was acquiring our ranch. I never heard coal or strip mining mentioned while I was growing up in connection with our ranch. It was not until four years after his death that Consolidation Coal brought the prospect of strip mining to our Bull Mountain ranch in the spring of 1970. I am sure that my experience is not dissimilar from those of many other people in Eastern Montana who are now faced with the prospect of coal development by strip mining.

For these reasons I think that H. B. 237 merely codifies the intentions in the minds of the parties during the time that the mineral reservations were made which are now causing so much distress. I would bring to the attention of the committee a case styled Wilkes-Barre Township School District v. Corgan, 403 Pa. 383, 170 A 2d 97, (1961), which deals with a situation somewhat similar to our present situation. The passage and approval of H. B. 237 would ease a lot of minds in Eastern Montana and would enable some of us who are faced with strip mining and coal companies to make a decision on whether it is worthwhile to make improvements on our ranches, to put a new roof on the house, to rebuild a barn that needs it, or to improve our watering systems and finish developments that we started pre-coal, or whether we should spend our energies to see if there is somewhere else we can go---away from strip mining. H. B. 237 would be a great help in returning hope and a reason for people who own land in the coal bearing areas to continue their activities with initiative.

In relation to H. B. 238, I think that this bill proposes a change in an area where change is due. To reiterate ancient history,

sub-paragraph 15 of Sec. 93-9902, R. C. M. was added in 1961 for the purpose of aiding ACM in its prosecution of the Berkley pit activities. In an attempt to aid one special interest, the state opened the whole of Montana to the threat of massive disturbance. In my opinion sub-section 15 represents nothing more than corporate socialism. There is presently nothing safe in this state; not churches, nunneries, monasteries, cemeteries, schools, hospitals, rest homes, dwelling-houses---not one single human refuge safe from the mineral interests.

It is time that the mining interests take their place with other business and commercial interests. Other businesses do not get every deal they want---only mining. I am sure that this committee will hear today the citations ad infinitum from the mining cases decided at the turn of the century stating that without mining the state of Montana would cease to exist.

I would remind this committee that a good many things have happened in Montana since 1900, not the least of which was the major settling of the entire Eastern half of the state, based on an entirely different economy. I think it is time that the legislature and the courts realize that agriculture has made a valuable and important contribution to the history and economy of the state as well, and that the people who are the producers of that contribution deserve equal rights to their property, too. After all, miners eat food and not metals or coal.

By the state granting its power of eminent domain to a private industry, it has given them a powerful legal and psychological tool. When condemnation is threatened, most people are so disillusioned and skeptical about the efficacy and fairness of a court proceeding which has only one outcome that they just give in. A lawsuit is a hassle for almost any plaintiff or defendant, and when the outcome is that one can totally lose the land, regardless of the amount of money paid, it is hardly worth it.

When one deals with a coal company, there is no sense of dealing with an ordinary buyer, because they try to pull time limits on the landowners. They gave my Mother one week. They came to another widow in the Bull Mountains, who had been there since homestead days, on a Saturday in the middle of January when it was well below zero, and she was trying to feed her calves and keep the house warm. They told her she had until Monday to say "Yes", and told her she could go see her lawyer because he was back in town from the legislature. A neighbor was there, who told them they ought to be ashamed of themselves, and that they should get their feet off the stove and go back to town if they were not going to help her with the chores.

If it was not for sub-paragraph 15, the coal company could not have the authority to give a widow until Monday to sign papers that she did not want to sign.

I further second Mr. Bailey's point about the acquisition of land as a speculative hedge, and would further point out how sub-paragraph 15 would contribute to the ownership of large areas of Eastern Montana by huge outside corporations. The nation has been lamenting

the decline of the family farm. I have heard other Montanans lamenting the acquisition of ranch land by doctors and oilmen seeking investments for their excess funds. With coal development facing Eastern Montana and sub-paragraph 15 unamended to use as a weapon, it may be that the remainder of Eastern Montana will end up in the hands of the outside corporations. I would further point out to this committee that the coal companies in the East have not made a habit of disposing of the land which they totally own and reclaim; therefore it is probable that the land which may be condemned will be permanently locked into corporate ownership. I do not think the legislature would find this to be a desirable situation.

In repsect to H. B. 239, I would recommend striking lines 16-23 beginning at "The provisions. . . .". This would have the effect of deleting this exception from the Land Owner Notification Act, and would make it apply equally to all mineral owners, irrespective of the amount of mineral owned. I see no rationale for this present exception. Why should bigger mineral owners be more of an exception than smaller mineral owners? A mineral owner owning 100% presently would not have to give notice, but a mineral owner owning 99% would have to give notice. The logic escapes me.

Submitted by,

Ellen Pfister Withers
on her own behalf and as a member
of the Bull Mountain Land Owners
P. O. Box 590
Billings, Montana

NAME: Ellen Pfister Withers DATE: 1-26-73

ADDRESS: PO Box 590 - Billings, Mt.

PHONE: 259-2086

REPRESENTING WHOM? Myself and as a member of Bull Mtn Landowners

APPEARING ON WHICH PROPOSAL: HB 237, 238 & 239

DO YOU: SUPPORT? X AMEND? X OPPOSE? _____

COMMENTS: Testimony on all three bills is in one statement, but could be severed depending on procedure

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Shirley J. Berg DATE: 1/26/23

ADDRESS: Box 545

PHONE: 793-8460

REPRESENTING WHOM? Sierra Club - upper missouri group

APPEARING ON WHICH PROPOSAL: HB 238, 237, 239

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: will leave a letter with you after hearing.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HB 244 was also discussed. Representative Lynch, sponsor, spoke. Senator Gilfeather moved this bill be concurred in; Senator Mathers seconded the motion; and the committee voted this bill BE CONCURRED IN.

HB 238 Senator Turnage moved this bill be concurred in; Senator Moore seconded; and the committee voted this bill be concurred in.

HB 237 Senator Gilfeather moved this bill be concurred in. Senator Hall seconded. Senator Mathers made a substitute motion that this bill be not concurred in; Senator Turnage seconded the motion; and the committee voted this bill BE NOT CONCURRED IN.

HB 402 Senator Turnage moved that amendments proposed by Sen. McKeon be adopted; Senator Boylan seconded the motion; and the committee adopted the amendments. (attached)

Senator Moore moved that as amended this bill be concurred in; Senator Boylan seconded the motion; and the committee voted this bill AS AMENDED BE CONCURRED IN.

HB 367 Senator Turnage moved to amend the bill; Senator Harrison seconded the motion and the committee adopted the following amendments:

I move to amend Section 3, page 2, line 3 by striking the words "felony" and inserting in lieu thereof the word "misdemeanor"

And further amend Section 3, page 2, line 4 by striking the words "in the state prison"

And further amend Section 3, page 2, line 5 by striking the word and number "five (5)" and inserting in lieu thereof the word and number "one (1)"

And further amend Section 3, page 2, line 6 by striking the words and number "five thousand dollars ($5,000)" and inserting in lieu thereof "one thousand dollars ($1,000)"

Senator Harrison moved it be concurred in; Senator Boylan seconded, and the committee voted this bill AS AMENDED BE CONCURRED IN.

HB 453 Senator Turnage moved this bill be not concurred in; Senator Boylan seconded the motion; and the committee voted this bill BE NOT CONCURRED IN.

HB 341 Senator Turnage moved that this bill be held over until the 1974 session; Senator Boylan seconded the motion; and the committee voted this bill BE HELD OVER.

The meeting adjourned; the next meeting is scheduled for February 27.

JUDICIARY

Senate Committee

Date 2/26 House Bill No. 238 Time 6:02

	Y	N
McKeon		
Gilfeather	✓	
Boylan	✓	
Hall	✓	
Zody	✓	
~~Drake~~ Mathers	✓	
Harrison	✓	
Moore	✓	
Turnage	✓	

M J Rice
Mary Jane Rice, Secretary

Senator Luke McKeon
Chairman

Motion: Be Concurred

state board examinations, which course of training and technical instruction shall be prescribed by the state board.

(4) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(5) No owner, or person in charge of a school of cosmetology shall permit any person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, any room used, wholly or in part for a school of cosmetology.

(6) *Licenses or certificates* of registration may be refused, revoked, or suspended, as provided in section 66-811.

(7) The state board shall have the power to prescribe such further rules and regulations as they deem necessary for the proper conduct of schools of cosmetology.

(8) The state board shall require of the person, firm, copartnership, or corporation operating a school to furnish a good and sufficient bond in the amount of five thousand dollars ($5,000) and in a form and manner to be prescribed by the board.

(9) No professional beauty shop shall be operated in connection with any school of cosmetology.

(10) The board may, by ruling, establish suitable curriculum for teachers' training in registered schools of cosmetology.

If a licensee shall contract a communicable disease, endangering the public health, the board shall, upon proof of same, cancel or suspend his or her license until such time as said licensee can secure a physician's certificate showing that such licensee is free from a communicable disease."

Approved: March 15, 1973.

CHAPTER NO. 311

An Act Amending Section 93-9902, R.C.M. 1947, to Declare That the Extraction of Coal By Strip Mining or Open Pit Mining Is Not A Public Use; and Setting Forth the Public Policy Therefor.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-9902, R.C.M. 1947, is amended to read as follows:

"93-9902. **What are public uses.** Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.

2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.

3. Public buildings and grounds for the use of any county, city, or town, or school districts; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, city, or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.

4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water.

5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water.

6. Private roads leading from highways to residences or farms.

7. Telephone or electric light lines.

8. Telegraph lines.

9. Sewerage of any city, county, or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten (10) families, or of any public buildings belonging to the state, or to any college or university.

10. Tramway lines.

11. Electric power lines.

12. Logging railways.

13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways, for such time as the court or judge may determine; provided, the grounds of state institutions be excepted.

14. Underground reservoirs suitable for storage of natural gas.

15. To mine and extract ores, metals or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others; *provided, however, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use and eminent domain may not be exercised for this purpose.*"

Section 2. There is a new section to be numbered 93-9902.1 which reads as follows:

93-9902.1. For the following reasons the state's power of eminent domain may not be exercised to mine and extract coal owned by the plaintiff located beneath the surface of property where the title to the surface is vested in others:

(1) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the forseeable development of other ores, metals, or minerals, and affecting large areas of land and large numbers of people;

(2) That in many areas of Montana set forth in (a) hereinabove, the title to the surface is vested in an owner other than the mineral owner, and that the surface owner is putting that surface to a productive use, and it is the public policy of the state to encourage and foster such productive use by such owner, and that to permit the mineral owner to condemn the surface owner is to deprive the surface owner of the right to use his property in a productive manner as he determines, and is also contrary to public policy as set forth in paragraph four (4) herein below;

(3) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain;

(4) That it is the public policy of the state to encourage and foster diversity of land ownership and that the surface mining of coal and control of large areas of land by the surface coal mining industry would not foster public policy and further the public interest.

Approved: March 15, 1973.

CHAPTER NO. 312

An Act to Amend Section 50-704, R.C.M. 1947, to Permit Assessment Work Performed at One (1) Point within a Group of Contiguous Claims to Apply to All Contiguous Claims.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 50-704, R.C.M. 1947, is amended to read as follows:

"50-704. **Recording of affidavit of performance of annual work.** The owner of a lode or placer claim who performs or causes to be performed the annual work, or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within ninety (90) days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own, or an affidavit of the person who performed such work or made the improvements, showing:

1. The name of the mining claim or claims;

2. The location of the claim or claims by sections, township, and range (by projected survey lines if located in unsurveyed country);

3. The book and page numbers wherein the original or latest amended relocation for each claim is recorded;

4. The number of days' work done, and the character and value of the improvements placed thereon, or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;

5. The dates between which such work or improvements were effected;